

53. The method of claim 52, wherein the cells are selected from the group consisting of lymphocytes, hybridomas, hemopoietic cells and endothelial cells. -

REMARKS

A final office action in this case was mailed June 20, 2001 (paper number 14). In that office action, all pending claims were rejected on 35 U.S.C. 112 first and second paragraph grounds. Claims 9-12 (now 43 to 46) and 16 (now 47) were rejected on anticipation grounds. Applicants' attorney discussed the claims in an October 2001 interview and submitted an amendment and reconsideration. A new examiner replied with an advisory action on March 15, 2002 (paper number 19), reasserting some rejections and pointing out that other rejections (particularly under 112 first paragraph) would be overcome by the proposed amendment.

Applicants now formally present amendments and have refiled this case for further consideration. Reconsideration and allowance are requested.

Upon entry of the foregoing amendment, claims 1-6, 8-12, 16, 18-20, 28 and 34-35 are cancelled and replaced with pending claims 36 to 53. For the Examiner's convenience, the correspondence of old claim numbers with new claim numbers, with comments as appropriate is set forth below.

Old No.	New No.	Comments
1	36	corresponds to non-entered amendment of 12/20/01
2	37	corresponds to non-entered amendment of 12/20/01
3	38	corresponds to non-entered amendment of 12/20/01
4	39	corresponds to non-entered amendment of 12/20/01
5	40	corresponds to non-entered amendment of 12/20/01
6	41	corresponds to non-entered amendment of 12/20/01

8	42	corresponds to non-entered amendment of 12/20/01
9	43	corresponds to non-entered amendment of 12/20/01 (note: clarifying language has been added)
10	45	corresponds to non-entered amendment of 12/20/01 (note: SEQ ID NO:1 is DNA sequence)
11	44	corresponds to non-entered amendment of 12/20/01 (note: this has become a dependent claim of claim 43)
12	46	corresponds to non-entered amendment of 12/20/01
16	47	corresponds to non-entered amendment of 12/20/01
18	48	corresponds to non-entered amendment of 12/20/01
19	49	corresponds to non-entered amendment of 12/20/01
20	50	corresponds to non-entered amendment of 12/20/01
28	51	corresponds to non-entered amendment of 12/20/01
34	52	corresponds to non-entered amendment of 12/20/01 (note: a method step has been added)
53	53	corresponds to non-entered amendment of 12/20/01

Objection to the Specification

On page 2 of the June 20, 2001 Office Action, the Examiner objected to the specification based on several informalities arguments. In response, applicants have changed a section heading as suggested and made other changes to the specification as requested in the 10/3/00 Office Action.

The term "b1" has been altered to "b."

The clause "shall be comprised" has been removed and replaced with clearer language.

Applicants point out that the phrase "v-IL-6 or the polypeptide" intends to mean both in the alternative, and that the term polypeptide is explained earlier in the paragraph. The spelling of the term "auxilliary" has been amended to "auxiliary."

The spelling of the term "hemopoetic" has been amended to "hemopoietic."

The name "california" has been capitalized.

The reference to the Dayhoff criteria has been modified in the figure legend for Figure 2. Applicants point out that skilled artisans understand the "Dayhoff criteria." For example, a tutorial on protein sequences found in www.psc.edu/biomed/TUTORIALS/SEQUENCE/DBSEARCH/oldtutorial.html refers to the "Dayhoff Model" and "Dayhoff Family" in this context on page 12.

Reconsideration and allowance are requested.

Claim Objections

The Examiner has pointed out misspelling of the word "competively" in claim 8. This spelling has been corrected.

Rejections under 35 U.S.C. § 101

The Examiner suggested adding the term "in an isolated cell" to overcome this rejection. The suggested language has been added to claims 1, 2, 10, and 28 (now 36, 37, 45 and 51 respectively). Applicants acknowledge the Examiner's decision in the Advisory Action that this amendment overcomes the rejection.

Rejections under 35 U.S.C. § 112, first paragraph:

The June 20, 2001 office action asserts a rejection of claims 4-6, 8, 12, 18, 19, 34 and 35 (now claims 39-42, 46, 48-49, and 52-53 respectively) under 35 U.S.C. 112, first paragraph, as containing subject matter not described in the specification. As explained during the October, interview, the fragments recited in original claims 4-6 include SEQ ID NO: 2. Original claim 8 (now 42) has been amended to recite a condition that "the fragment binds to the receptor." Claim 12 (now 46) has been amended to recite a condition that "the nucleic acid codes functional v-IL-6."

As suggested to applicants' attorney in the October, 2001 interview, the terms "pharmaceutical" and "which may be used in treatment" have been removed from claims 18 and 19 (now 48-49).

Also as suggested, the terminology of "used in treatment" has been removed from claims 34 and 35 (now 52-53).

Reconsideration and allowance in view of the amendments are requested.

Rejections under 35 U.S.C. § 112, second paragraph:

The June 20, 2001 office action asserts a rejection of original claims 1, 2, 4-6, 8-12, 16, 18-20, 28, 34 and 35 on indefiniteness grounds.

Those claims (now 36, 37, 45, and 51) and claims that depend thereon have been clarified by reciting that the v-IL-6 is obtained "in an isolated cell."

Claims 2, 3, 10 and 28 (now 37, 38, 45 and 51) were rejected because "there is no amino acid sequences set forth in Figure 2."

In response, applicants have amended the drawings by labeling the first page of Figure 2 2A, the second page 2B and the third page 2C. Applicants further amend these claims by adding SEQ ID NO as appropriate.

Claims 4 and 5 (now 39 and 40) were rejected because of the use of upper case and lower case letters. In response all of the letters have been amended to upper case lettering.

Claim 8 (now 42) has been clarified by incorporating the features "binds to the IL-6 receptor" and "wherein the fragment binds to the receptor" into this claim.

Claim 11 (now 44) has been amended to recite SEQ ID NO 1.

Claim 12 (now 46) has been clarified by the recitation "wherein the nucleic acid encodes functional v-IL-6."

Claim 16 (now 47) has been rejected for reciting only one component of the test kit. Applicants point out that test kits are well known, a most important feature of the claimed test kit is a nucleic acid that consists of SEQ ID NO:1, and the term "comprising" indicates that other components may be used.

Claim 18 (now 48) now refers to a polypeptide of claim 37 that has been more clearly defined by amendment to claim 37.

Claim 34 (now 52) has been clarified by removal of the phrase "which may be used in treatment, comprising adding to a cell culture comprising said cells a cell growth-stimulating amount of."

Claim 35 (now 53) has been clarified by correcting a spelling error for "hemopoietic."

Rejections under 35 U.S.C. § 102(a), (b):

Claims 9-12 and 16 were rejected as being anticipated by Zhong and Chang. The Examiner had pointed out that this rejection could be overcome by

amending the phrase "consisting essentially of" to "consisting of" at the top of page 10 of the June 20, 2001 office action. The word "essentially" has been removed and claims 43 (with dependent claims thereon) now recite "consisting of the sequence of SEQ ID NO:1 and that encode v-IL-6."

Reconsideration and allowance are requested.

CONCLUSION:

In view of the foregoing, Applicants respectfully request the Examiner to withdraw each rejection and pass the claims on to allowance. The Examiner is invited to contact the undersigned attorney to resolve any issues, in order to expedite the prosecution of the application.

Respectfully submitted,

April 17, 2002



Marvin A. Motsenbocker
Reg. No. 36,614

Customer ID No. 26633
HELLER EHRMAN WHITE & McAULIFFE
1666 K Street, NW, Suite 300
Washington, DC 20006-1228
(202) 912-2000 (telephone)



26633

PATENT TRADEMARK OFFICE